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IN THE

Supreme Court of the United States

No. 613—October Term, 1958

THE ST. REGIS TRIBE OF MOHAWK INDIANS,
Petitioner,

v.

THE STATE OF NEW YORK,
Respondent.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE A PETITION FOR REHEARING OUT OF TIME

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This petition for rehearing is devoid of merit and devoid of candor.

There is no justification or the statement that there is

> "a direct conflict between the decision below in the instant case and the even more recent decisions of *two* United States Courts of Appeals on the same federal question as to the application of 25 U. S. C. Sec. 177 to the State of New York, a matter of substantial importance to many owners and lessees of real estate in that State and to all of its some 6,500 reservation Indians" (Motion papers, pp. 1-2).

The determinative issue in the case decided by the Court of Appeals of the State of New York was not the meaning

of a Federal statute but whether the claimant Tribe had not parted with title more than a century before the case reached that Court. We reaffirm the position we took in opposing certiorari last January, when we stated to this Court that the Tribe's claim was dismissed because the record showed they had voluntarily conveyed their lands to the State at least as far back as 1856 (see N. Y. Laws 1856, ch. 127, and R., 75). And, as we also showed, it is arguable that title was conveyed as far back as 1796, for the Court of Appeals of New York said that the 1856 transaction and the compensation then paid to the Tribe

> "was not the negotiation of a *new* purchase of property from an Indian tribe, but rather the adjustment of a claim that had arisen as a result of the ambiguous language of the 1796 treaty" (5 N. Y. 2d, 24, 40, 152 N. E. 2d 411, 419).

The Tribe was paid £1200 in 1796 (R., 67-68). It was paid $5960 in 1856 (R., 75). Its preposterous request that it be paid $33,800,000 for the same lands in 1959 (R., 236-237), stamps its claim as unique in the annals of jurisprudence, both from the point of view of audacity and of callous disregard for the facts of history.

The motion should be denied.

May 19, 1959.

Respectfully submitted,

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